

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 592

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Offered February 1, 2012.

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TERRY L. SPIELER, Secretary.

4933S.05P

AN ACT

To repeal sections 213.010, and 213.111, RSMo, and to enact in lieu thereof three new sections relating to unlawful discriminatory practices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 213.010, and 213.111, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 213.010, 213.111, and 213.200, to read as follows:

213.010. As used in this chapter, the following terms shall mean:

(1) "Age", an age of forty or more years but less than seventy years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of sixty-five and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars;

(2) "**Because**" or "**because of**", as it relates to a decision or action, the protected criterion was a motivating factor unless the decision or action has an adverse impact on the protected criterion. In which case, courts shall rely heavily upon judicial interpretations of Title VII of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 **Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., as amended; the Age**
16 **Discrimination Employment Act of 1967, 29 U.S.C. 621, et seq., as**
17 **amended; and the Americans With Disabilities Act, 42 U.S.C. 12101, et**
18 **seq., as amended;**

19 **(3) "Commission", the Missouri commission on human rights;**
20 **[(3)] (4) "Complainant", a person who has filed a complaint with the**
21 **commission alleging that another person has engaged in a prohibited**
22 **discriminatory practice;**

23 **[(4)] (5) "Disability", a physical or mental impairment which**
24 **substantially limits one or more of a person's major life activities, being regarded**
25 **as having such an impairment, or a record of having such an impairment, which**
26 **with or without reasonable accommodation does not interfere with performing the**
27 **job, utilizing the place of public accommodation, or occupying the dwelling in**
28 **question. For purposes of this chapter, the term "disability" does not include**
29 **current, illegal use of or addiction to a controlled substance as such term is**
30 **defined by section 195.010; however, a person may be considered to have a**
31 **disability if that person:**

32 (a) Has successfully completed a supervised drug rehabilitation program
33 and is no longer engaging in the illegal use of, and is not currently addicted to,
34 a controlled substance or has otherwise been rehabilitated successfully and is no
35 longer engaging in such use and is not currently addicted;

36 (b) Is participating in a supervised rehabilitation program and is no
37 longer engaging in illegal use of controlled substances; or

38 (c) Is erroneously regarded as currently illegally using, or being addicted
39 to, a controlled substance;

40 **[(5)] (6) "Discrimination", any unfair treatment based on race, color,**
41 **religion, national origin, ancestry, sex, age as it relates to employment, disability,**
42 **or familial status as it relates to housing;**

43 **[(6)] (7) "Dwelling", any building, structure or portion thereof which is**
44 **occupied as, or designed or intended for occupancy as, a residence by one or more**
45 **families, and any vacant land which is offered for sale or lease for the**
46 **construction or location thereon of any such building, structure or portion thereof;**

47 **[(7)] (8) "Employer" [includes], a person engaged in an industry**
48 **affecting commerce who has six or more employees for each working**
49 **day in each of the twenty or more calendar weeks in a current or**
50 **preceding calendar year, and shall include** the state, or any political or civil

51 subdivision thereof[, or any person employing six or more persons within the
52 state, and any person directly acting in the interest of an employer], but does not
53 include **an individual employed by an employer, or a bona fide private**
membership club, other than a labor organization, which is exempt
from taxation under 26 U.S.C. Section 501(c), or corporations and
56 associations owned and operated by religious or sectarian groups;

57 **[(8)] (9)** "Employment agency" includes any person or agency, public or
58 private, regularly undertaking with or without compensation to procure
59 employees for an employer or to procure for employees opportunities to work for
60 an employer and includes any person acting in the interest of such a person;

61 **[(9)] (10)** "Executive director", the executive director of the Missouri
62 commission on human rights;

63 **[(10)] (11)** "Familial status", one or more individuals who have not
64 attained the age of eighteen years being domiciled with:

65 (a) A parent or another person having legal custody of such individual; or
66 (b) The designee of such parent or other person having such custody, with
67 the written permission of such parent or other person. The protections afforded
68 against discrimination on the basis of familial status shall apply to any person
69 who is pregnant or is in the process of securing legal custody of any individual
70 who has not attained the age of eighteen years;

71 **[(11)] (12)** "Human rights fund", a fund established to receive civil
72 penalties as required by federal regulations and as set forth by subdivision (2) of
73 subsection 11 of section 213.075, and which will be disbursed to offset additional
74 expenses related to compliance with the Department of Housing and Urban
75 Development regulations;

76 **[(12)] (13)** "Labor organization" includes any organization which exists
77 for the purpose, in whole or in part, of collective bargaining or of dealing with
78 employers concerning grievances, terms or conditions of employment, or for other
79 mutual aid or protection in relation to employment;

80 **[(13)] (14)** "Local commissions", any commission or agency established
81 prior to August 13, 1986, by an ordinance or order adopted by the governing body
82 of any city, constitutional charter city, town, village, or county;

83 **[(14)] (15)** "Person" includes one or more individuals, corporations,
84 partnerships, associations, organizations, labor organizations, legal
85 representatives, mutual companies, joint stock companies, trusts, trustees,
86 trustees in bankruptcy, receivers, fiduciaries, or other organized groups of

87 persons;

88 [(15)] **(16)** "Places of public accommodation", all places or businesses
89 offering or holding out to the general public, goods, services, privileges, facilities,
90 advantages or accommodations for the peace, comfort, health, welfare and safety
91 of the general public or such public places providing food, shelter, recreation and
92 amusement, including, but not limited to:

93 (a) Any inn, hotel, motel, or other establishment which provides lodging
94 to transient guests, other than an establishment located within a building which
95 contains not more than five rooms for rent or hire and which is actually occupied
96 by the proprietor of such establishment as his residence;

97 (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or
98 other facility principally engaged in selling food for consumption on the premises,
99 including, but not limited to, any such facility located on the premises of any
100 retail establishment;

101 (c) Any gasoline station, including all facilities located on the premises of
102 such gasoline station and made available to the patrons thereof;

103 (d) Any motion picture house, theater, concert hall, sports arena, stadium,
104 or other place of exhibition or entertainment;

105 (e) Any public facility owned, operated, or managed by or on behalf of this
106 state or any agency or subdivision thereof, or any public corporation; and any
107 such facility supported in whole or in part by public funds;

108 (f) Any establishment which is physically located within the premises of
109 any establishment otherwise covered by this section or within the premises of
110 which is physically located any such covered establishment, and which holds itself
111 out as serving patrons of such covered establishment;

112 [(16)] **(17)** "Rent" includes to lease, to sublease, to let and otherwise to
113 grant for consideration the right to occupy premises not owned by the occupant;

114 [(17)] **(18)** "Respondent", a person who is alleged to have engaged in a
115 prohibited discriminatory practice in a complaint filed with the commission;

116 [(18)] **(19)** "Unlawful discriminatory practice", any act that is unlawful
117 under this chapter.

213.111. 1. If, after one hundred eighty days from the filing of a
2 complaint alleging an unlawful discriminatory practice pursuant to section
3 213.055, 213.065 or 213.070 to the extent that the alleged violation of section
4 213.070 relates to or involves a violation of section 213.055 or 213.065, or
5 subdivision (3) of section 213.070 as it relates to employment and public

6 accommodations, the commission has not completed its administrative processing
7 and the person aggrieved so requests in writing, the commission shall issue to the
8 person claiming to be aggrieved a letter indicating his or her right to bring a civil
9 action within ninety days of such notice against the respondent named in the
10 complaint. If, after the filing of a complaint pursuant to sections 213.040,
11 213.045, 213.050 and 213.070, to the extent that the alleged violation of section
12 213.070 relates to or involves a violation of sections 213.040, 213.045 and
13 213.050, or subdivision (3) of section 213.070 as it relates to housing, and the
14 person aggrieved so requests in writing, the commission shall issue to the person
15 claiming to be aggrieved a letter indicating his or her right to bring a civil action
16 within ninety days of such notice against the respondent named in the
17 complaint. Such an action may be brought in any circuit court in any county in
18 which the unlawful discriminatory practice is alleged to have occurred, either
19 before a circuit or associate circuit judge. Upon issuance of this notice, the
20 commission shall terminate all proceedings relating to the complaint. No person
21 may file or reinstate a complaint with the commission after the issuance of a
22 notice under this section relating to the same practice or act. Any action brought
23 in court under this section shall be filed within ninety days from the date of the
24 commission's notification letter to the individual but no later than two years after
25 the alleged cause occurred or its reasonable discovery by the alleged injured
26 party.

27 **2. Any party to any action initiated under this section may
28 demand a trial by jury. If such trial occurs in the circuit courts of the
29 state of Missouri, the Missouri common law relating to the presentation
30 of evidence to a jury shall apply at trial, whether before a judge or
31 jury.**

32 **3. The court may grant as relief, as it deems appropriate, any permanent
33 or temporary injunction, temporary restraining order, or other order[,** and may
34 award to the plaintiff actual and punitive damages, and may award court costs
35 and reasonable attorney fees to the prevailing party, other than a state agency
36 or commission or a local commission; except that, a prevailing respondent may be
37 awarded court costs and reasonable attorney fees only upon a showing that the
38 case is without foundation].

39 **4. The court may award to the plaintiff actual and punitive
40 damages and may award court costs and reasonable attorney fees to the
41 prevailing party, other than a state agency or commission or a local**

42 commission; except that, a prevailing respondent may be awarded court
43 costs and reasonable attorney fees upon a showing that a case is
44 without foundation. An award of damages may include all future
45 pecuniary losses, emotional pain, suffering, inconvenience, mental
46 anguish, loss of enjoyment of life, and other nonpecuniary losses, and
47 punitive damages awarded under this section.

48 5. The total amount of damages awarded by the court for each
49 plaintiff shall not exceed:

50 (1) Actual back pay, interest on back pay, other equitable relief,
51 court costs and reasonable attorney fees if granted by the court, and
52 other damages up to the limits in subdivision (2) of this subsection; and

53 (2) (a) In the case of a respondent who has more than five and
54 fewer than one hundred employees in each of twenty or more calendar
55 weeks in the current or preceding calendar year, fifty thousand dollars;

56 (b) In the case of a respondent who has more than one hundred
57 and fewer than two hundred employees in each of twenty or more
58 calendar weeks in the current or preceding calendar year, one hundred
59 thousand dollars;

60 (c) In the case of a respondent who has more than two hundred
61 and fewer than five hundred employees in each of twenty or more
62 calendar weeks in the current or preceding calendar year, two hundred
63 thousand dollars;

64 (d) In the case of a respondent who has more than five hundred
65 employees in each of twenty or more calendar weeks in the current or
66 preceding calendar year, three hundred thousand dollars;

67 6. The limits set forth in subsection 5 of this section shall
68 increase or decrease in the same amounts as any corresponding limits
69 are increased or decreased in section 42 U.S.C. 1981a(b)(3).

70 7. Notwithstanding subsection 5 of this section, punitive damages
71 shall not be awarded against the state of Missouri or any other of its
72 political subdivisions; except in claims for discriminatory housing
73 practices as authorized in section 213.040.

74 8. Subsections 4, 5, and 6 of this section shall not apply when
75 there is an alleged violation of sections 213.040, 213.045, or
76 213.050. Subsections 4, 5, and 6 of this section shall apply when there
77 is an alleged violation of section 213.070 against an employer, but not

78 otherwise.

213.200. 1. This section shall be known and may be cited as the
2 "Whistleblower's Protection Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Because" or "because of", as it relates to a decision or action,
5 the person's status as a protected person was a motivating factor;

6 (2) "Employer", a person engaged in an industry affecting
7 commerce who has six or more employees for each working day in each
8 of twenty or more calendar weeks in a current or preceding calendar
9 year, and shall include the state, or any political or civil subdivision
10 thereof but does not include an individual employed by an employer,
11 or a bona fide private membership club, other than a labor
12 organization, which is exempt from taxation under 26 U.S.C. Section
13 501(c), or corporations and associations owned and operated by
14 religious or sectarian groups;

15 (3) "Proper authorities", a governmental or law enforcement
16 agency, or an officer or the employee's human resources representative
17 employed by the employer;

18 (4) "Protected person", a person who has reported to the proper
19 authorities an unlawful act of the employer or its agent or serious
20 misconduct of the employer or its agent that violates a clear mandate
21 of public policy as articulated in a constitutional provision, statute,
22 regulation promulgated under statute, or rule created by a
23 governmental body; or a person who has refused to carry out a
24 directive issued by an employer or its agent that if completed would be
25 a violation of the law. Additionally, a person who engages in conduct
26 otherwise protected by statute or regulation is a protected person.

27 3. This section is intended to codify the existing common law
28 exceptions to the at-will employment doctrine, and to limit their future
29 expansion by the courts. This section shall provide the exclusive
30 remedy for any and all unlawful employment practices articulated
31 herein and hereby abrogates any common law causes of action to the
32 contrary.

33 4. It shall be an unlawful employment practice for an employer,
34 as defined in subdivision (2) of subsection 2 of this section, to discharge
35 or retaliate against an individual defined as a protected person in this

36 section, because of that person's status as a protected person.

37 5. A protected person aggrieved by a violation of this section
38 shall have a private right of action for damages for violations of this
39 section which may be filed in a circuit court of competent
40 jurisdiction. The Missouri human rights commission shall not have
41 jurisdiction to review or adjudicate claims brought pursuant to this
42 section. The court may grant as relief, as it deems appropriate, any
43 permanent or temporary injunction, temporary restraining order, or
44 other order, and may award to the plaintiff actual and punitive
45 damages.

46 6. Any party to any action initiated under this section may
47 demand a trial by jury.

48 7. The court may award to the plaintiff actual and punitive
49 damages. An award of damages shall include all future pecuniary
50 losses, emotional pain, suffering, inconvenience, mental anguish, loss
51 of enjoyment of life, and other nonpecuniary losses, and punitive
52 damages awarded under this section.

53 8. The total amount of damages awarded by the court for each
54 complainant shall not exceed:

55 (1) Actual back pay, interest on back pay, other equitable relief,
56 and other damages up to the limits in subdivision (2) of this subsection;
57 and

58 (2) (a) In the case of a respondent who has more than five and
59 fewer than one hundred one employees in each of twenty or more
60 calendar weeks in the current or preceding calendar year, fifty
61 thousand dollars;

62 (b) In the case of a respondent who has more than one hundred
63 and fewer than two hundred one employees in each of twenty or more
64 calendar weeks in the current or preceding calendar year, one hundred
65 thousand dollars;

66 (c) In the case of a respondent who has more than two hundred
67 and fewer than five hundred one employees in each of twenty or more
68 calendar weeks in the current or preceding calendar year, two hundred
69 thousand dollars;

70 (d) In the case of a respondent who has more than five hundred
71 employees in each of twenty or more calendar weeks in the current or

72 preceding calendar year, three hundred thousand dollars.

73 9. The limits set forth in subsection 8 of this section shall
74 increase or decrease in the same amounts as any corresponding limits
75 are increased or decreased in Section 42 U.S.C. 1981a(b)(3).

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